DOCUMENT RESUME

ED 078 709 FL 004 144

TITLE Report on the Desirability of Adopting an International Instrument for the Protection of Translators.

INSTITUTION United Nations Educational, Scientific, and Cultural Organization, Paris (France).

PUB DATE 7 Aug 72

NOTE 16p.; General Conference, Seventeenth Session, Paris, France, August 7, 1972

EDRS PRICE MF-$0.65 HC-$3.29

DESCRIPTORS Committees; Conferences; *Copyrights; Cultural Exchange; *International Law; *International Organizations; *Legal Problems; Professional Recognition; *Translation

ABSTRACT

This report contains the formal documents leading to the inclusion on the provisional agenda of UNESCO's 1972 General Conference of a discussion considering the desirability of adopting an instrument for the protection of translators. Included in the document is the "Preliminary Study of the Technical and Legal Aspects of Copyright Protection for Translators." This report raises such issues as the quantitative importance of translation, the importance of the role of translation, and the need for high standards. It also considers the legal status of translators, reviewing present national and international agreements and certain special problem areas which are left unresolved such as renumeration, evaluation procedures, several translations of the same work, and retranslation. Also included are the recommendations of the Committee of Experts on Translators' Rights which worked for UNESCO in 1968. (VM)

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General Conference 17 C

Seventeenth session, Paris 1972

17 C/22
7 August 1972
Translated from the French

Item 27 of the Provisional Agenda

REPORT ON THE DESIRABILITY OF ADOPTING AN INTERNATIONAL INSTRUMENT FOR THE PROTECTION OF TRANSLATORS

SUMMARY

Having considered the preliminary study on the technical and legal aspects of the protection of translators which was submitted to it, pursuant to Article 3 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution, the Executive Board, at its 89th session, decided to include an item on the advisability of adopting international regulations on this subject in the Provisional Agenda of the General Conference. The above-mentioned study is attached to this document as Annex II.

The Board's resolution on this question will be found in paragraph 4 of the present document, and an extract from the report of the Board's Programme and External Relations Commission summarizing the latter's discussion of the matter is reproduced in Annex I.

Decision required: paragraph 8.

FL 004 949

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1. At its sixteenth session, the General Conference adopted a resolution (No. 5.131; paragraph (d)), authorizing the Director-General "to carry out studies concerning copyright protection for new categories of beneficiaries in the light of new communication techniques, particularly as regards translation, ...".

2. In pursuance of this resolution, and in accordance with Articles 2 and 3 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the Terms of Article IV, paragraph 4, of the Constitution, the Director-General has had a preliminary study made of the technical and legal aspects of the protection of translators. This study was submitted to the Executive Board at its 89th session (mid-July 1972), as required by Article 3 (b) of the aforesaid Rules of Procedure, and is attached to this document (Annex II).

3. Under Article 4, paragraph 1, of the above-mentioned Rules of Procedure, the Executive Board may communicate to the General Conference any comments it deems necessary on proposals submitted to it for the international regulation of a given problem. Annex I to this document contains an extract from the report of the Executive Board's Programme and External Relations Commission summarizing the latter's debate on the subject.

4. After examining the Director-General's report and the preliminary study, the Executive Board adopted the following resolution:

"The Executive Board,

1. Having regard to Articles 2 and 3 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution,

2. Having examined the report and preliminary study contained in document 89 EX/22,

3. Decides to include the following item in the Provisional Agenda of the seventeenth session of the General Conference: "Advisability of adopting international regulations on the protection of translators";

4. Recommends to the General Conference that it should invite the competent bodies of the Berne and Universal Copyright Conventions to consider the adequacy of the copyright protection enjoyed by translators under those conventions and in national laws, and propose any steps felt necessary to ensure that such protection is adequate."

5. According to Article 6 of the above-mentioned Rules of Procedure, it is for the General Conference to decide whether the question dealt with in the proposal should be regulated at the international level and, if so, to determine to what extent the question can be regulated and whether the method adopted should be an international convention or, alternatively, a recommendation to Member States. It should be remembered that, under Article 9 of the said Rules of Procedure, the General Conference does not vote on the adoption of a draft convention or recommendation before the ordinary session following that at which it has taken the decision. It therefore follows, in the present instance, that the General Conference could not adopt an international instrument on the protection of translators before its eighteenth session (1974).

6. Should the General Conference decide that the matter requires to be dealt with by means of an international instrument, the Director-General will have a preliminary report prepared, setting forth the position with regard to the problem to be regulated and to the possible scope of such an instrument. This report will be submitted to Member States for comments and observations, and may be accompanied by the first draft of a convention or recommendation. On the basis of the comments and observations transmitted, the Director-General will draw up a final report. Article 10, paragraph 4, of the aforesaid Rules of Procedure, states that it is for the General Conference to decide whether the final report should be submitted to it direct or to a special committee consisting of technical and legal experts appointed by Member States. In the latter case, the special committee would submit a draft which has its approval to Member States, with a view to its discussion at the General Conference.

7. The General Conference is also being asked to take a decision on the recommendation adopted by the Executive Board (paragraph 4, sub-paragraph 4, of this document) to the effect that the

competent bodies of the Berne and Universal Copyright Conventions be invited to consider the adequacy of the copyright protection enjoyed by translators under those conventions and in national laws, and propose any steps felt necessary to ensure that such protection is adequate.

8. In short, the General Conference is being asked:

(a) to decide whether the protection of translators should be dealt with by means of an international instrument, and, if so, to determine to what extent the question can be regulated and whether this should be done by means of an international convention or by a recommendation to Member States;

(b) to decide whether a special committee of government experts should be appointed to draw up the final text of the instrument, which would be submitted to the General Conference at its eighteenth session (1974);

(c) to decide whether to invite the competent bodies of the Berne and Universal Copyright Conventions to consider the adequacy of the copyright protection enjoyed by translators under those conventions and in national laws and to propose any steps felt necessary to ensure that such protection is adequate.

ANNEX I

REPORT OF THE PROGRAMME AND EXTERNAL RELATIONS COMMISSION
OF THE EXECUTIVE BOARD
(89th Session)
PART II (Item 4.6.1)

POSSIBLE INTERNATIONAL REGULATION ON THE PROTECTION OF TRANSLATORS (89 EX/22)

1. The Director of the Office of International Standards and Legal Affairs introduced document 89 EX/22 concerning this agenda item. He pointed out that the Executive Board was called upon to decide whether to include in the Provisional Agenda of the seventeenth session of the General Conference the question of the advisability of adopting international regulations on the protection of translators. He stressed the interest taken by the Organization in the problems posed by the status of translators and recalled that in 1959 the Intergovernmental Copyright Committee had considered the matter. He also drew attention to the work of the Committee of Experts convened in 1968 in pursuance of resolution 14 C/5.121 (d) to examine the moral and material situation of this category of intellectual workers, and to the results of the survey conducted among Member States, following the meeting of the Committee of Experts on the recommendations adopted by it and in particular on the question of whether Member States favoured the General Conference's adopting international regulations on the subject. Though rather limited in number, the responses to this consultation revealed a trend in favour of the preparation of such regulations.

2. One member asked for information on the budgetary implications of the project should the General Conference decide that the protection of translators should be made the subject of international regulations.

3. Recalling the rôle and importance of translation in cultural exchanges, another member considered that international regulation of the profession was necessary in order to assure the protection of the rights of translators. He therefore supported the draft resolution submitted to the Executive Board in paragraph 6 of document 89 EX/22.

4. Yet another member pointed out that translators were already protected under the Berne Convention by express assimilation with authors. The Universal Copyright Convention, on the other hand, relegated competence in this matter to national legislation. It therefore occurred to him that only those States whose national legislation did not provide such protection needed to be induced to adopt legislative measures. Consequently, a specific convention did not seem to be the appropriate way of achieving the necessary protection which, in his view, should be the subject of collective agreements. For those reasons he was not greatly in favour of including the issue in the agenda of the seventeenth session of the General Conference.

5. Some members, noting that the protection of translators fell in the field of copyright, suggested that the Intergovernmental Copyright Committee and the Executive Committee of the Berne Union should be invited to take up the matter before any final decision was taken by the General Conference.

6. One of those members added that it was inconceivable that translators should be better protected than the authors themselves and that the problem should therefore be dealt with in the context of a revision of the copyright conventions.

7. Another member considered that, while translators were not in fact expressly referred to in the Universal Copyright Convention, its provisions did not exclude their assimilation to creative writers. In his view, there was little to be said for the preparation of a specific new convention on the subject and he proposed that the draft resolution in paragraph 6 of document 89 EX/22 be amended to invite the copyright convention committees to examine the adequacy of the protection afforded to translators under existing conventions and national legislation, and to propose any measure which they might deem necessary to make it adequate.

8. In his reply, the Director of the Office of International Standards and Legal Affairs pointed out that assuming a decision by the General Conference that the protection of translators should be regulated on an international basis, paragraph 5033 of 17 C/5 comprised proposals designed to give effect to such decision, in particular by convening a committee of technicians and legal experts appointed by Member States, together with the necessary budgetary provisions, amounting to $3,900. With regard to the reservations expressed by certain members regarding the preparation of a new international convention, he pointed out that, taking into account the existing international conventions and national legislation and subject to whatever decision the General Conference might take, document 89 EX/22 did not contemplate the preparation of a convention which would be additional to existing agreements or create new rights, but rather the adoption of a recommendation which would define guidelines and standards to which Member States would be invited to give effect according to their own legislative systems and in the light of the international agreements to which they might be parties. The General Conference, which was specifically empowered to adopt such recommendations, would in this instance be the most appropriate organ to take the action in question. Recalling moreover that provision was made in paragraph 4529 of 16 C/5 for a report on the subject to be submitted to the General Conference at its seventeenth session, the Director of the Office of International Standards and Legal Affairs said that it would doubtless be advisable for the Executive Board to address to the General Conference itself any comments which the Board might wish to make in that connexion.

9. The representative of the United Kingdom submitted to the Commission an amendment to paragraph 6 of document 89 EX/22, proposing the addition of a fourth paragraph, to read as follows:

> "4. Recommends to the General Conference that it should invite the competent bodies of the Berne and Universal Copyright Conventions to consider the adequacy of the copyright protection enjoyed by translators under those conventions and in national laws, and propose any steps felt necessary to ensure that such protection is adequate".

10. The Director of the Office of International Standards and Legal Affairs said that, in so far as the protection of translators required, on the part of States, not so much provisions embodied in laws and conventions as measures designed to ensure the application in practice of existing texts, the studies which the Copyright Convention committees would be invited to undertake and the conclusions at which those committees might arrive, would in no way detract from the

utility of a recommendation whose purpose would be to define appropriate means whereby the desired protection might be more effectively ensured.

11. The Commission unanimously decided to recommend that the Executive Board adopt the resolution contained in paragraph 6 of document 89 EX/22, with the addition of a fourth paragraph worded in accordance with the proposal mentioned in paragraph 9 above.

12. Speaking in explanation of his vote, the representative of the United States of America said that his Government considered that the question should be settled individually by each Member State but that, if it was to be regulated at the international level, this should be done by means of a recommendation and not of a convention.

13. The Commission unanimously recommended that the Executive Board adopt the following resolution:

"The Executive Board,

1. Having regard to Articles 2 and 3 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution,

2. Having examined the report and preliminary study contained in document 89 EX/22,

3. Decides to include the following item in the Provisional Agenda of the seventeenth session of the General Conference: 'Advisability of adopting international regulations on the protection of translators;'

4. Recommends to the General Conference that it should invite the competent bodies of the Berne and Universal Copyright Conventions to consider the adequacy of the copyright protection enjoyed by translators under those conventions and in national laws, and propose any steps felt necessary to ensure that such protection is adequate".

ANNEX II

PRELIMINARY STUDY OF THE TECHNICAL AND LEGAL ASPECTS OF COPYRIGHT PROTECTION FOR TRANSLATORS

I. IMPORTANCE OF TRANSLATION

1. "We must remember the immense importance of communication between countries which depends almost entirely on translations", said Alberto Moravia at the International PEN Congress held in Rome in 1963. This "immense importance" is confirmed by facts and figures.

A. Quantitative importance of translation

2. The number of translations is growing very quickly from year to year. The great bulk of them are scientific or technical translations published in newspapers and journals. To quote a few telling figures: it is reckoned that there are now more than 70,000 scientific and technical periodicals, each issue of which contains an average of eight articles, totalling some 3,360,000 articles a year. (The Washington National Science Foundation even speaks of five million.) Not all of them are worth translating, and many overlap as between one language and another; but nevertheless a good third are in fact worth translating.

3. If to this already enormous quantity of texts are added all those that are translated in government departments, large international organizations and private firms, as well as published translations of literary works and those designed for the use of radio, television and the cinema, one is astonished at the amount of translation carried out.

B. Importance of the rôle of translation

4. Translation plays an outstandingly important part in the general context of development, because it makes it possible to disseminate works across linguistic frontiers. With the spread and advance of education, and the growing variety and complexity of problems relating to the needs of peoples in respect of education, science, technology and culture, the information and leisure requirements of the public are increasing enormously. Here the three following basic factors should be borne in mind: (i) a nation's desire to export its works; (ii) a nation's desire to have access to the best works of other nations (this factor assumes particular importance when one considers the situation in the developing countries, which, generally having no national authors capable of writing the works that are essential on all kinds of subjects, especially those dealing with science, technology and education, are forced, and will continue to be forced for many years, to resort to translations); (iii) the interflow of ideas promoted by the international use of intellectual works.

5. The importance of the rôle of translation was moreover recognized by the General Conference when it proclaimed 1972 International Book Year, selecting as the first of the four themes of the Year "encouragement of authorship and translation, with due regard to copyright".

6. Article III of the "Charter of the Book", which was adopted in Brussels on 22 October 1971 by the Support Committee for International Book Year, composed of representatives of international professional organizations of authors, translators, publishers, librarians, booksellers and documentalists, reads as follows:

> "The Universal Declaration of Human Rights states that 'everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author'. This protection should be also extended to translators, whose work opens the horizon of a book beyond linguistic frontiers, thus providing an essential link between authors and a wider public. Since all countries have the right to express their cultural individuality, preserving the diversity essential to civilization, they should encourage authors in their creative rôle, and should provide, through translation, wider access to the riches contained in the literature of other languages, including those of limited diffusion".

C. Need for high standards in translation

7. A translation, which is a vehicle for ideas, should not only be accurate, i.e. reproduce the author's thought without distorting it, but should also have genuine literary value; this is particularly necessary in the case of translations of other than scientific or technical works. The translator's task in fact is to recreate the work in the language of the translation, which calls not only for thorough linguistic proficiency, but also real literary gifts. For scientific and technical works, the translator must also have a good specialist knowledge of the discipline concerned, and a thorough knowledge of the terminology.

II. LEGAL STATUS OF TRANSLATORS

8. The great majority of national legislations and international conventions recognize translators' copyright, either directly or indirectly. It seems nevertheless that both in theory and in practice, the resultant protection for translators remains inadequate.

9. The main reason for this is firstly, that legal protection of translators' rights does not extend to all categories of translation, and secondly, it does not solve certain problems peculiar to translation.

A. National legislations and international conventions do not cover all categories of translation

10. (a) Generally speaking, only translations published in book form or in that of plays which we actually performed on the stage are protected by copyright. This is bound to be so in the case of legislation providing for legal deposit. Under other legislations, translators of unpublished books or unperformed plays could probably claim moral or economic rights, but with great difficulty as regards arbitration, since it is not customary to grant such rights. This applies for example to translations of scientific and technical articles published in newspapers and journals, and texts used for radio, television, the cinema, and so on. The point is that, as noted above (I.4), scientific and technical articles account for a large proportion of the texts translated, and with present-day developments, media such as radio, and particularly television, are assuming more and more importance everywhere.

11. (b) Unpublished or unperformed translations, especially technical translations, are often done by employees for their firm. In some rare cases, for example the French law of 1957, national legislations stipulate that the execution of a literary or artistic work as part of a service contract shall not deprive the author of protection under copyright legislation.

12. It would appear, however, that in most countries normal practice is contrary to this principle.

13. (c) Lastly, scientific and technical translations may be refused copyright protection on the grounds that copyright applies only to original, or rather, creative works. Admittedly the same problem arises in connexion with original or "first-hand" texts, but it is more acute in the case of translations, for the reasons mentioned above.

14. Some legislations deal explictly with this question, but generally in a restrictive sense obviously referring to literary translations (e.g. the Federal Republic of Germany: Copyright Statute 1965, Article 3: "Translations ... of a work which constitute ... intellectual creations ... shall be protected ..."). Somewhat more applicable to scientific and technical translations is the criterion adopted by Romanian legislation (e.g. Copyright Statute 1956, amended in 1957, Article 10: "The following shall also give rise to copyright ... (b) translations ... of technical and scientific works ... if their accomplishment requires the knowledge of a specialist in the field of the original work, and if they represent an intellectual, creative work").

B. <u>National legislations and international conventions do not solve certain problems peculiar to translation</u>

15. Generally speaking, international conventions and national legislations recognize the translator's copyright in most cases by assimilating it directly or indirectly to the author's copyright.

16. However, a number of special problems arise in adapting copyright to translations, primarily due to the relations which inevitably grow up, for each translation, among several persons who are, in addition, usually nationals of different States: e.g. the author of the "first-hand" work, the publisher in the country or countries of the language in which it is written, the translator and the publisher of the translation. Over and above these various people concerned, there may be the added complication of a number of translators (relationship between several translations of the same first-hand work, whether successive translations or done at the same time; or retranslation of a work from another translation of it already existing).

17. (a) Only one of the special problems of translation has been dealt with by national legislations and international conventions, namely that of the right of translation; but this concerns primarily the author of the first-hand work, who has the right to make or authorize a translation of his work. As regards the restrictions imposed on the exercise of this right, they have been prescribed in the general interest, rather than in the particular interest of translators.

18. It is of course possible that the translator may one day find himself in the position of author vis-à-vis a translator.

19. Quite apart from this case, it would be to the translator's advantage to be informed by a central body of the possibility or otherwise of legally translating existing works.

20. (b) As regards the remaining problems, international conventions and national legislations have not settled certain basic issues, for example the following:

(i) The remuneration of translators of published works, which is still very often solely on a lump-sum basis

21. Where remuneration is proportionate, percentages are very inadequate.

22. One step towards the solution of this problem might be to establish an international translation centre which would provide a permanent link between authors, publishers and translators in the various countries, enabling them to become better acquainted with current conditions in their respective countries and to conclude model or collective agreements or contracts.

(ii) Approval of a translation

23. Translators come up against special difficulties as regards an assessment of their work by the foreign author and/or publisher, and more frequently still, by the publisher of the translation itself (who considers that he has delegated authority to act for the foreign author and/or his publisher).

24. It seems natural that the right of translation, which belongs to the author, should confer on such author the right to approve the translation prior to its publication. In fact, this is a very complex question, which cannot be solved under existing regulations. Most of them are silent on the subject. Where, in exceptional cases, national legislations deal with it, they provide for an assessment of the translator's competence by a specially appointed panel or authority (Argentina, India, Mexico, Nepal, Pakistan); though this is only in cases where the translation is to be done under licence without the authorization of the author.

25. In other cases, recourse must be had to common law, which entails approval by the author or his beneficiaries. But the author is often quite unable to understand, let alone judge of, the language into which his work is translated. In practice, in most countries the author considers that he has ceded the right of commissioning and supervising the translation to his publisher, and that the latter has transmitted it to the publisher in the language of the translation. In any case, what is required is a literary evaluation, i.e. something both difficult and subjective. Even where there is no doubt as to the good faith of the parties, there is always an element of doubt here from which literary translators always suffer.

26. Several solutions have been proposed. It can be argued that the fact of choosing a translator means that he is considered sufficiently reliable to be master of his own text. This is incidentally the approach most in keeping with the literary nature of the work of translation as it should be ideally; but it must be recognized that even the best of translators are not perfect.

27. The International Federation of Translators (FIT) suggests as a solution the establishment of an international arbitration system, which might well be entrusted to the international translation centre proposed under (i) above.

(iii) Several translations of the same work

28. Although the original or first-hand work is a single work, it may be translated several times, either at different periods or simultaneously. The problems arising out of this situation, which are not covered either by national legislations or by international conventions, are generally solved in the countries negotiated by the author or his publisher in respect of the right of translation.

(iv) Retranslations

29. There is no reference to the problem of retranslation in either national legislations or international conventions, notwithstanding the tricky questions involved, with each producer of a work being in the position of an author vis-à-vis the retranslator.

III. THE WORK OF THE COMMITTEE OF EXPERTS IN SEPTEMBER 1968

30. The purpose of this meeting, convened by the Director-General in pursuance of resolution 5.121 adopted by the General Conference at its fourteenth session, was to examine the situation of translators in law and in practice, and to make recommendations for improving the status of this category of intellectual workers. The participants - experts in copyright or in questions concerning the status of translators - came from fifteen Member States of Unesco and were invited in their personal capacity by the Director-General. The meeting was also attended by observers from intergovernmental and non-governmental organizations particularly interested in the matters examined. At the conclusion of its discussions the Committee of Experts adopted a set of recommendations which are contained in the Appendix to this preliminary study.

31. After noting that, to promote the circulation of publications, certain measures should be taken to improve the status of translators, the Committee of Experts defined the principles which should be applied to that end, concerning (i) the status of the translator (salaried translator, independent translator, hire of work); (ii) the contractual relationships between author and publisher, author and translator, publisher and translator; (iii) translator's rights; (iv) scope of protection.

IV. SURVEY CONDUCTED AMONG MEMBER STATES

32. By letter CL/2012 of 10 April 1969, the Director-General communicated the report and the recommendations of the Committee of Experts to Member States, inviting them to comment thereon, and in particular to indicate whether they felt that the General Conference should adopt an international instrument on the subject. The International Labour Organisation (ILO) and the United International Bureaux for the Protection of Intellectual Property (BIRPI) (which has subsequently become the World Intellectual Property Organization (WIPO)) were also invited to submit their comments.

33. As at 1 January 1972, the following States had replied to circular letter CL/2012: Austria, Belgium, Burma, Burundi, Ceylon, Chile, Colombia, Ecuador, Finland, Iran, Madagascar, Mauritius, Nigeria, Saudi Arabia, Sweden, Uganda, Upper Volta, Venezuela and Zaire. The Directors-General of the International Labour Office and the World Intellectual Property Organization have also replied to the letter sent them by the Director-General.

V. PROSPECTS OF A SOLUTION

34. The studies conducted since 1960 have resulted in a better knowledge of the status of translation and translators, both in law and in practice, as well as of the suggestions by experts and specially qualified bodies such as the International Federation of Translators. An examination of the documents concerned enabled the 1968 Committee of Experts to adopt recommendations which should have a very great influence on any subsequent studies. The recommendations are based on the following two key ideas: (i) recognition of the existence of a widespread cultural problem underlying all the questions arising in connexion with the moral and material situation of translators: (ii) confirmation of an "enlarged field", i.e. the need to expand the protection afforded to translators to new categories.

35. In its recommendations the Committee of Experts listed the solutions that it proposed for improving the status of translators. These should be studied more thoroughly before any international instrument is adopted on the subject, but the question as to whether measures ought to be taken internationally to improve the status of translators should be raised now. The International Book Year might be an appropriate occasion for deciding to draw up such an international instrument.

Replies to the survey conducted by the Director-General

36. Most of the countries which replied by 1 January 1972 consider that a special instrument would be desirable.

37. Austria answered on 16 September 1969 that "The implementation of these recommendations /the recommendations of the 1968 Committee of Experts/ would result in considerable moral and material progress for translators, whose work deserves to be appreciated far more than hitherto. It would be desirable for the General Conference to adopt an international instrument on this subject".

38. Ceylon, Chile, Ecuador, Finland, Iran and Nigeria express similar views.

39. The Belgian Government states "... the best way of providing protection for translators is to begin by encouraging them to organize their own profession ... and then to introduce the widespread use of model contracts, which might even be collective. Legal protection for translators (as indeed for authors) should depend primarily on the interpretation of contracts, and can be devised only in the context of general legal principles. The discussions of the Committee of Experts clearly reflect the confrontation between the Berne Union countries and countries whose national legislations stop at a lower level of protection. It is therefore unrealistic to try to introduce, at the international level, a single regulation to cover all countries".

40. The Swedish Government states that "If ... new international rules are to be adopted in this respect, this should be done within the framework of existing copyright conventions, i.e. the Berne Convention and the Universal Copyright Convention, and in accordance with the procedure laid down for the revision of these Conventions".

41. The Director-General of the International Labour Office has informed the Director-General that the International Labour Organisation has no comments to make on the recommendations of the Committee of Experts. The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI), who has since become the Director-General of the World Intellectual Property Organization (WIPO), has explained that these recommendations are being studied thoroughly, and that any comments by BIRPI will be communicated in due course.

VI. CONCLUSIONS

42. Though few replies have been received, it nevertheless appears that in the view of several governments, measures should be taken internationally to improve the status of translators, who play an essential part in the general context of development.

43. A number of governments having said that they were in favour of an international instrument on this subject, the question now arises as to the kind of international instrument - convention or recommendation - which should embody the basic principles to serve as a guide to Contracting States. In this respect, the possibilities offered by the system of rules in the form of a recommendation, a flexible method more suited than a convention to the complexity of the problems at present under study, should not be overlooked. The recommendations which the General Conference is authorized to adopt under Article IV of the Constitution are designed to influence the development of national legislations and practice by defining international policy. They nevertheless leave States entirely free to implement their provisions in the manner most suited to their particular situation. It thus seems obviously desirable to have recourse to them in regulating questions which do not lend themselves to a standard solution for all countries.

APPENDIX

COMMITTEE OF EXPERTS ON TRANSLATORS' RIGHTS
Unesco House, Paris, 23-27 September 1968

RECOMMENDATIONS

The Committee of Experts on Translators' Rights, meeting in Paris from 23 to 27 September 1968

Noting that the spread of culture and the interplay of ideas facilitated by the international use, through translations, of publications helps to promote mutual understanding between peoples and co-operation between nations,

Considering the extremely important rôle that translation plays in regard to development generally,

Considering that the protection accorded to translators and/or translations largely influences the selection of works for translation as well as the quality of translations,

Considering that the principle and some of the terms of that protection are already established in international conventions and the national legislations of many countries through assimilation of the translator to the author from both the moral and the economic points of view,

Noting that, to promote the circulation of publications, certain measures should be taken to improve the status of translators,

Having adopted a report summarizing the results of its discussions,

Recommends that due account be taken of the principles set out below, as they may lead to positive results:

1. Equitable remuneration should in all cases be accorded to the translator and he should, as a general rule, participate in all subsequent exploitations of his translation;

2. A translator not paid a salary should be remunerated by a percentage of the economic return on the work translated, and given an advance on this percentage, this advance in any case to remain the property of the translator, whatever the final return; but the possibility remains to pay a lump-sum for certain categories of publications, such as scientific or technical works, anthologies, educational publishing, etc.;

3. Contracts concluded between salaried translators and physical persons or legal entities employing them (service contracts in particular) should specify the purpose for which works translated under the terms of the contracts are intended, and make provision for a supplementary payment, should the normal use made of the work go beyond that contemplated under the contracts;

4. For purposes of contract interpretation, it should be assumed that only rights that have been expressly stipulated have been ceded by the translator.

Moreover, a translation of a work against payment, even of a lump-sum, should, as a general rule and for copyright purposes, be regarded as made under a contract for commissioned work, and not as a service contract; it should, however, be open to the contracting parties to provide explicitly and in writing that the copyright shall belong to the publisher or to any other person who has commissioned the translation;

5. Encouragement should be given to all measures calculated to improve the quality of translations, in particular, and in accordance with the systems adopted in the various countries, by intensifying contracts between authors and translators, and facilitating the consultation of the author by the translator in the course of translation; by promoting the creation of translators' professional bodies; by setting up private or public professional organs to verify the quality of translations and to settle any disputs arising in that connexion; by giving the name of the translator and the language from which the translation has been made; by taking all appropriate action to encourage the training of translators, etc.;

6. It should be acknowledged that it is generally the user of a translation who undertake to obtain the necessary permission to use the work and is responsible to the translator for any consequences resulting from lack of permission;

It should be acknowledged that, even in the case of a lack of the author's permission, the translator (or his assigns) may prohibit the use of his own translation and that if he has carried out an unauthorized translation in good faith, he is not liable to any penalty, without prejudice for the original author to prohibit the use of the translation;

7. Article V, subsections 5 and 6 of the Universal Copyright Convention should be amended to assure that the name of a translator who has obtained a translation licence in accordance with Article V should appear on all printed copies of the published translation, as well as in the copyright notice, provided in Article III, in addition to the name of the original copyright proprietor;

8. The possibility should be studied of improving the economic status of translators, following national and international meetings which might be arranged between the representatives of the various interests concerned (authors, translators, users) and, with a view to encouraging such meetings, consideration should be given to the setting up of an appropriate liaison committee;

9. With a view to facilitating adequate remuneration of translators belonging to developing countries, funds should be provided within the framework of bilateral co-operation programmes for payment of the royalties of authors belonging to producing countries, in cases where translations of their works are used in developing countries, as proposed, inter alia, in Unesco's Draft Programme and Budget for 1969-1970;

10. Model translation contracts should be drawn up in the light of the principles set forth in these recommendations, it being understood that such contracts should make due allowance for all situations likely to arise by reason either of the translator's status or of the nature of the translation;

11. Professional statutes, collective agreements and contracts of employment based thereon, should mention explicitly the class of translators of scientific and technical texts, so as to take account, particularly as regards their professional classification, of their status as translators holding copyright;

12. The attention of governments, foundations, universities, international organizations and all other similar bodies concerned should be drawn to the need for ensuring the circulation of translations of works of outstanding importance for the promotion of education, science, technology and culture but likely to prove uneconomic, and accordingly guaranteeing adequate remuneration to the translator of such works;

13. Consideration should be given to means of including the translator's name in the material used for promoting and publicizing the translated work, and, particularly, his name should be included in all announcements or communications issued by the publishers or other users;

14. Wherever possible, the translation of an original work direct into another language should be encouraged, recourse being had to retranslation only where absolutely unavoidable;

15. Means should be sought of promoting the means of communication and meetings between translators with a view to improving the national and international organization of their profession, particularly in the developing countries.